

BL-043 REVISED**Guidance on Farm Credit Bank and Association Nominating Committees**

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To: Chairman, Board of Directors
Each Farm Credit Bank and Association

From: Nancy C. Pellett
Chairman and Chief Executive Officer

Subject: Bookletter #043 Revised – Guidance on Farm Credit Bank and Association Nominating Committees

One of the most important contributions that a Farm Credit System (System) bank or association stockholder can render is service as a member of his or her institution's nominating committee. It is through this service that member-owners influence the institution's commitment to good governance. This booklet, through a question-and-answer format, provides guidance to Farm Credit banks and associations on organizing their nominating committees. It also provides guidance on a nominating committee's authority in selecting a slate of candidates for all open stockholder-elected director positions and the permissible activities of directors, officers, employees, and agents in working with nominating committees.

Organizing a Nominating Committee**1. Are nominating committees required for all Farm Credit bank and association director elections?**

Yes. The Farm Credit Act of 1971, as amended (Act), at section [4.15](#), requires System associations to have nominating committees to nominate eligible candidates for all stockholder-elected director positions. The Act also provides for the Farm Credit Administration (FCA or Agency) to issue rules governing the election of Farm Credit bank directors. In 2006, the Agency issued FCA regulation § [611.325](#) to regulate the associations' use of nominating committees and to require Farm Credit banks to use nominating committees in electing their directors.¹

2. How are nominating committees formed?

Although not required, a nominating committee charter is the best place to address the formation of the committee, number of committee members, selection of alternate members, and the general eligibility requirements for committee membership. A charter normally outlines the duties and responsibilities of, and resources available to, the nominating committee and must be consistent with current law and regulations. Effective committee charters also address recusal procedures, oaths of office and confidentiality requirements, committee duties in response to interim board vacancies, and selection of committee members.

Alternatively, Farm Credit banks' and associations' boards of directors may adopt bylaw provisions or written policies and procedures to describe how nominating committee members are identified. Policies and procedures might also provide for electing alternates to the nominating committee to ensure that the regulatory minimum of three members is always available to carry out committee responsibilities.

3. Who is eligible to serve on a nominating committee?

Our rules require the voting stockholders of an association or Farm Credit bank to elect all nominating committee members. The stockholders of a Farm Credit bank or association may not elect an individual to serve on its nominating committee who, at the time of election to, or during service on, its nominating committee, is an employee, director, or agent of the institution. This means that nominating committee members will be voting stockholders of the association, or, with Farm Credit banks, authorized representatives from the stockholder associations.² An institution's written policies on impartiality in elections and conflicts of interest may affect eligibility for the nominating committee because nominating committee members are subject to those same policies. Additional eligibility requirements may include being a stockholder in good standing or having knowledge of a director's duties within the institution.

4. How are nominating committee candidates identified?

Candidates may be identified through floor nominations at annual meetings, names submitted via an institution's Web site (as long as other means are available that do not require electronic access), telephone voice mail, or other nominating procedures. While institutions may use their staff to help identify nominees for nominating committee membership, an institution's officers and employees should exercise caution to ensure that they do not directly or accidentally influence the process. A nominating committee is a committee of voting stockholders, acting on behalf of the institution's stockholders; therefore, directors or management of the institution should not name candidates for, or appoint members to, the nominating committee. Election to the nominating committee is best treated as a competitive process in which stockholders may name themselves or other stockholders as candidates for the committee. The voting stockholders of each Farm Credit bank will, by necessity, involve directors of those stockholder associations or other voting entities (eligible cooperatives in the case of CoBank) in identifying potential committee members.

5. How is the election of nominating committee members conducted?

Institutions are expected to follow the rules on voting procedures contained in FCA regulations §§ [611.330](#) and [611.340](#) in electing nominating committees. Farm Credit banks and associations may also, but are not required to, provide for floor nominations for nominating committee members. Farm Credit banks and associations will also have to identify the manner in which results of the election for nominating committee members is provided to stockholders.

Institutions may not simultaneously elect a nominating committee and ask that committee to simply endorse the director candidates being elected on the same ballot. The newly elected committee will be responsible for identifying director candidates for the next director election, thus allowing the nominating committee sufficient time to identify, review the qualifications of, and develop the slate of director candidates.

6. What election procedures must associations follow in electing nominating committee members?

Section [4.15](#) of the Act requires that each association's nominating committee members be elected at the annual meeting to serve a one-year term of office. Our rules allow association nominating committee

members to serve subsequent terms, so association committee members may stand for reelection at the next annual meeting. If in-person voting does not take place at the meeting, nominating committee members are elected by mail ballots following the annual meeting (that means using the same procedures as for director elections). Association charters, bylaws, policies, or procedures will need to specify whether nominating committee members are elected on a regional basis (similar to director candidates) or at large (all voting stockholders are allowed to vote on the election of all committee members).

7. What election procedures must Farm Credit banks follow in electing nominating committee members?

Under our rules, a Farm Credit bank's nominating committee is elected by its voting stockholders, but banks are not required to elect their nominating committee at their annual meetings nor limit committee membership to a one-year term. However, Farm Credit Banks must use weighted voting procedures, with no cumulative voting allowed, when electing members to serve on a nominating committee.

8. What information is provided on candidates for membership on a nominating committee?

It is appropriate for Farm Credit banks and associations to provide voting stockholders with the names of candidates for the nominating committee and a brief background on the committee candidates (as long as all candidates are treated equitably). Associations may want to include the region of the institution's territory the candidates represent if the nominating committee members are either nominated or elected by region, and banks may want to identify the association with which a candidate is affiliated. Institutions may include the information on the candidates for membership on the nominating committee in the Annual Meeting Information Statement (AMIS). If so, the AMIS should also explain the nominating and voting procedures to be used to elect the nominating committee for the coming year.

9. When do nominating committee members need to recuse themselves?

Nominating committee members should recuse themselves whenever their participation in committee activities presents a conflict of interest or the appearance thereof. For example, a nominating committee member who has a family member that is seeking election to the board may have to recuse him or herself from the nomination process. Further, a nominating committee member may not be a director candidate in the same election for which the committee is identifying nominees. Recusals may leave the institution with fewer than the needed three committee members, so establishing alternate members or increasing the size of the committee beyond the minimum is encouraged.

10. May nominating committee members receive pay or reimbursement from the institution?

Yes, but institutions should proceed with caution. Institutions may adopt nominating committee policies under § 611.320 that allow paying nominating committee members a reasonable fee or providing repayment for actual expenses. Institutions considering such payments are encouraged to address how the pay is determined and to ensure that payments are provided in a nondiscriminatory manner to all members.

Nominating Committee Duties and Authority

11. How does a nominating committee find two candidates for an open stockholder-elected director position?

FCA regulation § 611.325(c) requires each institution to provide its nominating committee with a current

list of stockholders in the institution. A nominating committee is expected to use this list to fulfill its duties in finding willing nominees representing all areas of the institution's territory and, as nearly as possible, all types of agriculture practiced within the territory. FCA rules also require providing nominating committees with the institution's current bylaws and director qualification policies to aid the committees in identifying potential director candidates.

While at least two candidates for each open stockholder-elected director position is expected, it may not always be possible to identify two candidates. In those situations, the nominating committee must provide a written explanation to its institution's board, describing its efforts to find at least two willing candidates and the reasons for disqualifying any other candidate that resulted in fewer than two nominees. A summary of this explanation must be included in the AMIS.

12. What if a nominating committee is having trouble finding two candidates for an open stockholder-elected director position?

Institutions may allow use of their Web sites or a telephone message center to collect names of individuals interested in becoming directors. Farm Credit bank and association policies and procedures adopted under FCA regulation § [611.320](#) may allow employees or agents to aid the nominating committee in finding qualified and willing candidates. This opportunity must be available to any employee and not be confined to senior officers. We discuss the parameters of this assistance further below.

13. Do incumbent directors seeking reelection have to go through the nominating committee process?

Yes. The nominating committee is the only committee within a Farm Credit bank or association allowed to select a slate of candidates for each open stockholder-elected director position. The nominating committee's task is to nominate those individuals whom it decides best meet the needs of the stockholders and the board of directors. All individuals interested in election (or reelection) to a Farm Credit bank or association board of directors, except floor nominees, may only be placed on the ballot if nominated by the institution's nominating committee. Incumbent directors may submit their own names to the nominating committee, similar to how other stockholders do, to express their interest in running for reelection. Incumbent directors do not receive special exemptions from the nomination process nor may institutions require their nominating committees to nominate incumbents. However, incumbent directors may be nominated from the floor.

14. Do floor nominees for open director positions have to go through the nominating committee process?

No, as mentioned in the answer to question 13, floor nominations are the only exception to the nominating committee process. However, FCA regulation § [620.21\(d\)\(5\)](#) provides that floor nominees must still satisfy director eligibility requirements and make the required director candidate disclosures before voting takes place. It is not necessary for the ballot to identify how a candidate was nominated.

15. Does a nominating committee have a role to play when a board is downsized?

Yes. It is important to note that even if the board agrees to a downsizing plan, it must be structured to provide for the election of at least one director each year based on directors' staggered terms. Thus, it remains the responsibility of the nominating committee to select the slate of candidates for the open director position, and this decision may not be transferred to the board or any other party. As noted

above, this authority does not prevent an eligible stockholder from seeking a floor nomination and pursuing his or her candidacy independently of the nominating committee's slate of candidates.

16. Does a nominating committee identify director candidates for mid-term board vacancies?

Maybe. At a minimum, each board must consist of at least 60 percent stockholder-elected directors. Should a mid-term vacancy occur that would reduce the number of stockholder-elected directors to fewer than 60 percent of the board, the nominating committee would need to reconvene to identify nominees for the vacancy, and a special election would need to be held. If the mid-term vacancy does not affect this 60 percent minimum requirement, then the board may choose to appoint a director, which means the nominating committee would not be involved in filling the vacancy.

Permissible Activities of Directors, Officers, Employees, and Agents

17. May the institution's board of directors help the nominating committee find director candidates?

Yes, directors may suggest names of potential candidates for director positions to the nominating committee; however, directors should not be the only source used to identify potential candidates. Directors may also invite their nominating committee members to attend a board meeting so the committee can gain a clearer understanding of the role of the board in an institution's operations or discuss their views on the roles of the board with the nominating committee. Directors may also attend local gatherings to promote the benefits and rewards of board service and encourage voting stockholders to make themselves available as potential candidates for directors or as candidates to serve on the nominating committee. The board should use caution to avoid activities that could be construed as influencing the nominating committee's vote on its slate of candidates, particularly those directors seeking re-election to the board. No director may be present when the nominating committee deliberates or votes on its slate of candidates.

18. May institution officers, employees, or agents provide names of potential director candidates to the nominating committee?

Nominating committee policies and procedures adopted under FCA regulations § [611.320](#) and § [611.325](#) may permit employees and agents to provide names of potential director candidates to the nominating committee, but this opportunity must be available to any employee and not be confined to senior officers. If requested by the nominating committee, management may provide a list of the institution's advisory committee members or any other persons with grassroots connections to the institution from which the nominating committee may identify potential candidates. However, the board policy should remind employees and agents to avoid activities that could be construed as intended to influence the nominating committee's vote on its slate of candidates. Officers, employees, and agents cannot be present when the committee deliberates or votes on its slate of candidates. In addition, a board's policy and procedures may include giving the nominating committee biographies, resumes, and/or loan payment status (i.e., whether the potential candidate's loan is current) on potential candidates. If board policy permits this type of assistance to the nominating committee, then the board should direct officers, employees and agents to provide the assistance requested by the nominating committee.

19. What other activities are permissible for officers, employees, and agents?

Bank and association written procedures may permit officers, employees, or agents to aid the nominating

committee in finding qualified and willing candidates. Such activities may include discussing with the nominating committee the functions of the board, needed skills and expertise, time requirements to serve on the board, minimum attendance at board meetings, and mandatory training required of directors. If the board permits these activities, then it should direct officers, employees, and agents to perform these activities when requested by the nominating committee.

FCA has published a pamphlet, “The Role of Farm Credit System Nominating Committees,” which is designed to help stockholders and prospective nominating committee members understand their responsibilities. We encourage banks and associations to make the pamphlet available at all headquarters and branch offices. It is also available at FCA’s Website at www.fca.gov (look under Resources for the FCS).

¹Farm Credit banks’ compliance with FCA regulation § 611.325 is delayed until April 5, 2007.

²CoBank, ACB (CoBank) also has voting stockholders that are other than System associations and may therefore have nominating committee members that are representatives of the voting stockholder associations or other voting stockholders.

Copy to: The Chief Executive Officer
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